

EX PARTE 02-144 FILED

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December 19, 2003

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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DEC 19 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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**Re: Ex Parte Presentation in MB Docket No. 02-144
Time Warner Cable**

Dear Ms. Dortch:

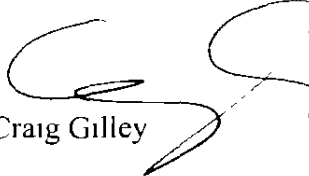
On behalf of Time Warner Cable, submitted herewith pursuant to Section 1.1206(b)(2) of the Commission's rules are an original and one copy of this notice regarding a permitted *ex parte* presentation in the above-referenced proceeding. On December 18, 2003, Gary Matz of Time Warner Cable and Arthur Harding and Craig Gilley of Fleischman and Walsh, L.L.P., met with William H. Johnson, Marjorie Reed Greene, Steven Broeckert, John Norton, Katie Costello and Kenneth Lewis of the Media Bureau to discuss issues relating to streamlining the process for determining cable communities subject to effective competition.

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The points emphasized by Time Warner Cable in this presentation are set forth in the summary attached as Exhibit A. In addition, there was discussion involving the recent correspondence attached as Exhibit B between Time Warner Cable, Echostar, DirecTV and SBCA regarding SBCA's efforts at implementing a DBS subscriber reporting database. Note that SBCA initially assured Time Warner Cable that the "transition" would be completed by "the end of November," and that its "new software system" would be implemented "imminently (i.e., by the end of November)." Thereafter, cable operators were promised that SBCA's "effective competition tracking report" ("ECTR") would be implemented by "mid-December." Also note that the last page of Exhibit B is a download of a SBCA webpage (as of December 18, 2003), the website where cable operators are being directed in response to their inquiries about the current state of SBCA's implementation of the new reporting system. Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,



Craig Gilley

cc William H. Johnson, Media Bureau
Marjorie Reed Greene, Media Bureau
Steven Broeckaert, Media Bureau
John Norton, Media Bureau
Katie Costello, Media Bureau
Kenneth Lewis, Media Bureau

cc Qualex International

161714

EFFECTIVE COMPETITION

- **It is no longer valid to simply “presume” the absence of effective competition.**
 - Assigning the burden of proof was a close call ten years ago and the dramatic change in the competitive landscape since then warrants revisiting the presumption that effective competition does not exist
 - Effective competition should be presumed to exist throughout any county with DBS penetration above a specified threshold, e.g., 18%
 - ✓ SBCA would need to post monthly or quarterly updates of aggregate county-wide DBS subscriber totals
 - ✓ LFAs could rebut the presumption with community-specific showings
 - ✓ FCC would need to require DBS providers (or SBCA) to make community-specific penetration data available to LFAs
 - ✓ LFAs seeking to regulate rates for the first time would have to show the absence of effective competition, much as they are required to do when re-certifying after a finding of effective competition
 - At a very minimum, the burden of proof should be neutral
 - ✓ With no presumption that a particular community either is or is not subject to effective competition, determinations would be based on a preponderance of the evidence
 - ✓ Unopposed petitions could be granted automatically upon close of comment period
- **The Commission should take official notice that DirecTV and EchoStar satisfy the first prong of the 50/15 competing provider test.**
 - The Commission has repeatedly recognized that DBS is technically available throughout the continental United States
 - The Commission has also routinely recognized that there are no regulatory, technical or other impediments to the receipt of DBS service

DirecTV and EchoStar unquestionably offer programming “comparable” (as defined by the FCC rules) to that of any cable operator
 - It is beyond dispute that U.S. consumers today are universally “reasonably aware” of the availability of DBS service, particularly in any community where DBS penetration exceeds 15%

- **The Commission must assure that DBS subscriber data is readily available.**

DBS providers have traditionally refused to comply with Sec. 76.907(c) on the grounds that such data was available through the SkyTRENDS process

- The DBS providers have recently terminated their relationship with the independent third party that has been compiling the SkyTRENDS data.

The process is being brought in house to the trade association controlled by DirecTV and EchoStar -- the Satellite Broadcasting and Communications Association ("SBCA")

- SBCA has not yet established procedures for responding to data requests pursuant to Sec. 76.907(c)
- The FCC should make clear that until SBCA is able to commit to respond to data requests within 15 days and at no charge, DBS providers are responsible for compliance with Sec. 76.907(c) directly

- **Whether provided directly or through SBCA, DBS providers should be required to certify, under penalty of perjury, that they are providing reliable data.**

- Responses pursuant to Sec. 76.907(c) must
 - ✓ Allow a cable operator to make a request via a simple, standard format listing franchise areas and zip codes
 - ✓ Produce reports that are essentially the same in format and scope as the previous SkyTRENDS reports in terms of clearly listing DBS provider subscribership (on an aggregate basis if provided through SBCA) as well as households per zip code.
 - ✓ Report residential subscriber totals that reflect only current subscribing full-time households, as that term is defined by the 2000 Census, using actual street addresses of service locations and not a P.O. Box or billing address (where different from service locations). Inactive accounts are not to be counted and duplicate entries must be removed. Single households with multiple receivers must be counted only once.
 - ✓ Reflect the most recently available United States Postal Service information, including the zip code for each subscriber's actual service location address, and correct invalid addresses (including zip codes) accordingly
 - ✓ Remove commercial and test accounts
 - ✓ Count each occupied unit served in a multiple dwelling unit building as a separate residential subscriber, regardless of whether billed individually or as part of a bulk

account. Subscribers in group living quarters, as that term is defined by the 2000 Census, are not included in the subscriber totals.

- ✓ Count courtesy customers in the subscriber totals.
- ✓ Include with each report a detailed explanation of the methodology used.
- ✓ Certify, using the attached model format, that all of the information contained in each report is correct and has been compiled in accordance with the foregoing criteria.

- These requirements will impose no additional burdens on DBS providers because they are already required to maintain and disclose to broadcast networks information regarding their subscriber service locations (including subscriber name, street address, county and zip code). See 17 U.S.C. §§ 119(a)(2)(C), 122(b), *see also In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 15 FCC Rcd 21688, ¶¶ 30-31, n. 110 (2000).
- Moreover, the FCC has determined that competing providers have an obligation to provide subscriber information necessary for effective competition petitions “at their own expense.” *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, ¶ 45 (1993).
- Sec. 76.907(c) should be available both to cable operators seeking decertification and LFAs seeking recertification.
- The party seeking the data should be responsible for providing the list of zip codes associated with each affected community.

- **A pre-filing stipulation procedure should be adopted to minimize disputes in connection with processing effective competition petitions.**

- Avoiding zip code disputes
 - ✓ The cable operator should have the option to provide the list of zip codes that it believes are properly associated with each applicable community, including any maps or other back up information relied upon.
 - ✓ The LFA would have 20 days to submit any maps or other information challenging the zip code list proffered by the cable operator.
 - ✓ The cable operator would then have the option of accepting the modifications proposed by the LFA, or explaining in its petition why it has declined to do so.
 - ✓ Absent a response from the LFA, the list of zip codes proffered by the operator would be deemed to be correct.

- ✓ Avoiding disputes over household counts
 - ✓ The cable operator also should have the option to provide the 2000 Census figure for occupied households to the affected LFA in advance.
 - ✓ The LFA would then have an opportunity to provide any documentary evidence supporting its claim that a different household count should be used.
 - ✓ The cable operator would then have the option of accepting the household count proposed by the LFA, or explaining in its petition why it has declined to do so
 - ✓ Without objection, the Census number will be deemed correct
- **The foregoing modifications would address concerns raised in the recent GAO Report.**
 - ✓ It would help assure the reliability of DBS data
 - ✓ By making it easier for affected parties to file for changes in effective competition classification, it would help assure that such classifications reflect current competitive conditions
 - ✓ By establishing a “stipulation” process, it would help avoid factual disputes that have interfered with expeditious resolution of effective competition petitions by the FCC.
 - ✓ It would allow future reports to Congress pursuant to Sec. 623(k) of the Act to be based on comparisons of rates between communities where there has been an express finding of effective competition and those where there has been an express finding of no effective competition (e.g , recertification or denial of an effective competition petition)
Communities where the absence of effective competition historically has merely been “presumed” would be excluded from the sample

CERTIFICATION

I, [NAME] , [TITLE] hereby declare, under penalty of perjury, as follows:

1 I understand that on [date] , [cable operator] submitted to [EchoStar/DirecTV/SBCA] a request for direct-to-home ("DTH") subscriber data with respect to the franchise areas listed on Attachment 1, having also provided a list of those zip codes properly associated with each franchise area. I further understand that [cable operator] intends to use this data in connection with its analysis of the presence of effective competition.

2 In order to meet its obligations pursuant to Section 76.907(c) of the FCC rules, on [date] , [EchoStar/DirecTV] provided [cable operator/SBCA] with its subscriber totals for each such franchise area. Such subscriber totals are current as of [date] .

3 In order to provide accurate and timely subscriber data in fulfillment of its obligations pursuant to Section 76.907(c) of the FCC rules, [EchoStar/DirecTV] maintains and routinely updates its subscriber database in conformance with the subscriber tabulation methodology established by the FCC. Specifically:

- a The reported residential subscriber totals reflect only current subscribing full-time households, as that term is defined by the 2000 Census, using actual street addresses of service locations and not a P.O. Box or billing address (where different from service locations).
- b Zip code information for each subscriber's actual service location address has been updated to reflect the most recently available United States Postal Service information. Invalid service addresses have been corrected.
- c Inactive accounts are not counted and duplicate entries have been removed. Single accounts with multiple receivers are only counted once.
- d Commercial and test accounts are not included.
- e Each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber, regardless of whether billed individually or as part of a bulk account. Subscribers in group living quarters, as that term is defined by the 2000 Census, are not included in the subscriber totals.
- f Any courtesy customers have been included in the subscriber totals.

4 I understand that the foregoing certification constitutes a representation of fact upon which the FCC may rely in making an effective competition determination.

FLEISCHMAN AND WALSH, L. L. P.

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DAVID A. KONUCH

October 20, 2003

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** LEGISLATIVE, NON-LAWYER
*** IL BAR ONLY

Via Certified Mail

Mr. Martin Esteves
Satellite Broadcasting and Communications Association
225 Reineckers Lane, Suite 600
Alexandria, VA 22314

Dear Mr. Esteves,

I am writing on behalf of Time Warner Cable to inquire about the status of an outstanding request for an effective competition tracking report detailing direct broadcast satellite ("DBS") provider subscribership data for approximately 20 communities in and around the Los Angeles metropolitan area which are served by Time Warner Cable. We are in the process of preparing effective competition petitions for these communities, and therefore require access to the requested data to support our pleadings. On September 23, 2003, we placed an order with the DBS providers' third-party designated agent, Media Business Corp. ("MBC"), for the most recent subscribership data (August). Despite the fact that the FCC rules (Section 76.907(c)) very clearly require DBS providers to supply such information within 15 days of such a request from a cable operator, the requested data has not yet been produced.

During our call last Thursday, you confirmed that MBC will no longer be providing aggregate DBS subscriber data and your organization has assumed this responsibility. You also indicated that SBCA's systems and software are in a transition phase and not ready to produce the requested data, that SBCA does not currently have access to the raw subscribership data from the DBS providers, and that it would be at least a month, and maybe longer, before SBCA would be in any position to actually provide any data to cable operators. Accordingly, and in light of the fact that it has been

well over 15 days from the date of our latest request, we hereby request that SBCA commit to a firm date by which it will provide us with the response to our September 23, 2003 request

We also note that, because the DBS providers have moved this process "in-house" by electing to provide this data only through a trade association that they control and not through an independent third-party, there is no longer any justification for the imposition of any fees or reimbursement charges. Any such fees as a pre-condition for cable operator access to the DBS providers' subscribership data would violate Section 76.907(c), which clearly states that the DBS providers must provide subscribership data within 15 days of a request from a cable operator without condition. Since the DBS providers are not allowed to charge for the provision of this data directly they certainly can't be allowed to impose a charge by funneling the data through their trade association.

Further, we would appreciate any further details as to SBCA's processes for responding to future cable operator requests for subscribership data. In order to ensure that the process available through MBC is replicated without additional burdens, and in light of the fact that the MBC process has been recognized by the FCC as an acceptable means of reporting DBS subscribership, we would expect that SBCA

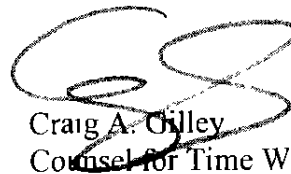
- (1) allow a cable operator to make a request via a simple email listing franchise areas and/or zip codes in Excel format;
- (2) allow a cable operator to request and receive data either on 5 digit zip codes or ZIP+4 basis,
- (3) produce reports that are essentially the same in format and scope as the MBC reports in terms of clearly listing DBS provider and direct-to-home satellite carrier subscribership, households, and rough penetration percentages for each identified community unit and zip code;
- (4) include with each report a detailed explanation of the methodology used;
- (5) confirm that such data reflects only current subscribing households (not individual receivers or subscriptions) using actual street addresses of service locations and not P.O. box or billing addresses;
- (6) ensure currency and accuracy of ZIP codes and ZIP+4 extensions;
- (7) remove commercial and test accounts, with multiple dwelling unit accounts considered as residential subscribers regardless of whether billed as individual units or bulk accounts,
- (8) include courtesy customers in subscriber totals;
- (9) utilize current political entity boundary and zip code database information, and
- (10) certify that all of the information contained in each report is correct.

Mr Martin Esteves
Satellite Broadcasting and Communications Association
October 20, 2003
Page 3

Finally, we would expect that, in accordance with the requirements of Section 76.907(c), any such process produce the requested data within 15 days of the submission of a request by a cable operator.

Thank you for your attention. If you have any questions, please feel free to contact me at (202) 939-7900

Sincerely,

A handwritten signature in black ink, appearing to read "CG", is written over the printed name and title.

Craig A. Gilley
Counsel for Time Warner Cable

cc Steven Broeckaert, Esq (Media Bureau, FCC)

160363



November 21, 2003

Craig A. Gilley, Esq.
Flieschman and Walsh, L L P
1919 Pennsylvania Avenue, N W
Suite 600
Washington, D C 20006

Dear Mr. Gilley

In response to your letter dated October 20, 2003, and as a follow up to our telephone conversation on October 16, 2003, I am writing to confirm that the Satellite Broadcasting and Communications Association ("SBCA") is in the process of implementing a system to provide effective competition tracking data that encompasses direct broadcast satellite service ("DBS") provider subscriber data. Such data was previously provided to the multi-channel video programming distributor marketplace by Media Business Corp ("MBC"), and SBCA intends to become the centralized source for such data on a going-forward basis such that Time Warner Cable's request and any future requests from cable operators can be accommodated by SBCA.

SBCA is currently in the process of completing a complicated implementation of the software and systems required to process effective competition data requests with the aid of an outside software consulting firm. It is currently anticipated that the transition to SBCA as the source of marketplace effective competition DBS data will be completed at the end of November, and you should anticipate Time Warner Cable's request to be processed shortly thereafter.

We have not yet finalized the process and operational details relating to future data requests and will inform you of the request process once we have done so. Thank you for your patience during this transition.

If you have any questions or comments, please contact me at 703-739-8355.

Sincerely,

Martin Esteves

cc Steven Broecker, Esq. (Media Bureau, FCC)

725 Reinekers Lane - Suite 600
Alexandria, VA 22314
Voice: 703.549.6990 800.541.5981
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DAVID A. KONUCH

November 10, 2003

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*** IL BAR ONLY

Via Certified Mail Return Receipt

Larry D. Hunter, Esq.

Corporate Senior Vice President and General Counsel

Hughes Electronics Corporation

200 N. Sepulveda Blvd

El Segundo, CA 90245

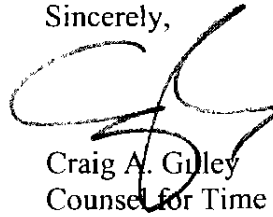
Dear Mr. Hunter:

I am writing on behalf of Time Warner Cable to request DirecTV provide subscriber totals for the 90 zipcodes included in Exhibit A attached to this letter. Pursuant to Section 76.907(c) of the Federal Communications Commission rules, DirecTV is required to provide Time Warner Cable with such totals within 15 days of receipt of this request and without charge.

As I am sure you are aware, due to recent developments, DTH subscriber totals necessary to prepare effective competition petitions are no longer "otherwise available" from any other source. On September 23, 2003, we made a request to Media Business Corp. ("MBC"), your former third-party reporting agent, for such information. To date, the requested information has not been supplied by MBC, and MBC has advised us that the DTH providers are no longer providing the requisite subscriber information to MBC. Subsequently on October 20, 2003, we sent the letter attached as Exhibit B to the Satellite Broadcasting and Communications Association ("SBCA"), which press reports and MBC have indicated has now been designated by DirecTV and EchoStar as the entity responsible for aggregating and providing DBS provider subscriber information in response to Section 76.907(c) requests. To date, we also have not received any response to this letter. In telephone calls with SBCA representatives, we have learned that SBCA is not currently capable of providing such data, and that no date has been set by which SBCA will be capable of timely and properly responding to Section 76.907(c) requests.

As the requested information is clearly not otherwise available, and as we have been unable to receive any assurance that such information will be available through SBCA any time within the foreseeable future, it is evident that we are entitled to obtain this data directly from DirecTV. In accordance with Section 76.907(c), we expect DirecTV to respond to this request within 15 days by providing accurate subscriber totals for each of the listed zipcodes. Should you have any questions regarding this matter, please feel free to contact me at (202) 939-7928.

Sincerely,

A handwritten signature in black ink, appearing to be 'CG' with a stylized flourish.

Craig A. Gilley
Counsel for Time Warner Cable

Exhibit A

<u>FRANCHISE</u>	<u>COUNTY</u>	<u>STATE</u>	<u>ZIP</u>	<u>SUBSCRIBERS</u>
El Segundo city	Los Angeles	CA	90245	_____
Gardena city	Los Angeles	CA	90247	_____
Gardena city	Los Angeles	CA	90248	_____
Gardena city	Los Angeles	CA	90249	_____
Hawthorne city	Los Angeles	CA	90250	_____
Hawthorne city	Los Angeles	CA	90260	_____
Hawthorne city	Los Angeles	CA	90303	_____
Hawthorne city	Los Angeles	CA	90304	_____
Lawndale city	Los Angeles	CA	90260	_____
Los Angeles city	Los Angeles	CA	91303	_____
Los Angeles city	Los Angeles	CA	91304	_____
Los Angeles city	Los Angeles	CA	91306	_____
Los Angeles city	Los Angeles	CA	91307	_____
Los Angeles city	Los Angeles	CA	91311	_____
Los Angeles city	Los Angeles	CA	91316	_____
Los Angeles city	Los Angeles	CA	91324	_____
Los Angeles city	Los Angeles	CA	91325	_____
Los Angeles city	Los Angeles	CA	91326	_____
Los Angeles city	Los Angeles	CA	91330	_____
Los Angeles city	Los Angeles	CA	91331	_____
Los Angeles city	Los Angeles	CA	91335	_____
Los Angeles city	Los Angeles	CA	91340	_____
Los Angeles city	Los Angeles	CA	91342	_____
Los Angeles city	Los Angeles	CA	91343	_____
Los Angeles city	Los Angeles	CA	91344	_____
Los Angeles city	Los Angeles	CA	91345	_____
Los Angeles city	Los Angeles	CA	91352	_____
Los Angeles city	Los Angeles	CA	91356	_____
Los Angeles city	Los Angeles	CA	91364	_____
Los Angeles city	Los Angeles	CA	91367	_____
Los Angeles city	Los Angeles	CA	91401	_____
Los Angeles city	Los Angeles	CA	91402	_____
Los Angeles city	Los Angeles	CA	91403	_____
Los Angeles city	Los Angeles	CA	91405	_____

Los Angeles city	Los Angeles	CA	91406	_____
Los Angeles city	Los Angeles	CA	91411	_____
Los Angeles city	Los Angeles	CA	91423	_____
Los Angeles city	Los Angeles	CA	91436	_____
San Fernando city	Los Angeles	CA	91340	_____
San Marino city	Los Angeles	CA	91108	_____
South Pasadena city	Los Angeles	CA	91030	_____
Torrance city	Los Angeles	CA	90277	_____
Torrance city	Los Angeles	CA	90278	_____
Torrance city	Los Angeles	CA	90501	_____
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Santa Clarita city	Los Angeles	CA	91321	_____
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Los Angeles County	Los Angeles County	CA	91342	_____
Los Angeles County	Los Angeles County	CA	91350	_____
Los Angeles County	Los Angeles County	CA	91351	_____
Los Angeles County	Los Angeles County	CA	91354	_____
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Orange city	Orange	CA	92866	_____
Orange city	Orange	CA	92867	_____
Orange city	Orange	CA	92868	_____
Orange city	Orange	CA	92869	_____
Stanton city	Orange	CA	90680	_____
Stanton city	Orange	CA	92804	_____
Stanton city	Orange	CA	92841	_____
Westminster city	Orange	CA	92655	_____
Westminster city	Orange	CA	92683	_____
Westminster city	Orange	CA	92844	_____

Exhibit B

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1919 PENNSYLVANIA AVENUE, N.W.
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JAMES N. MOSKOWITZ
DAVID A. KONUCH

October 20, 2003

* MI AND IL BAR ONLY
** LEGISLATIVE, NON-LAWYER
*** IL BAR ONLY

Via Certified Mail

Mr. Martin Esteves
Satellite Broadcasting and Communications Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

Dear Mr. Esteves:

I am writing on behalf of Time Warner Cable to inquire about the status of an outstanding request for an effective competition tracking report detailing direct broadcast satellite ("DBS") provider subscribership data for approximately 20 communities in and around the Los Angeles metropolitan area which are served by Time Warner Cable. We are in the process of preparing effective competition petitions for these communities, and therefore require access to the requested data to support our pleadings. On September 23, 2003, we placed an order with the DBS providers' third-party designated agent, Media Business Corp. ("MBC"), for the most recent subscribership data (August). Despite the fact that the FCC rules (Section 76.907(c)) very clearly require DBS providers to supply such information within 15 days of such a request from a cable operator, the requested data has not yet been produced.

During our call last Thursday, you confirmed that MBC will no longer be providing aggregate DBS subscriber data and your organization has assumed this responsibility. You also indicated that SBCA's systems and software are in a transition phase and not ready to produce the requested data, that SBCA does not currently have access to the raw subscribership data from the DBS providers, and that it would be at least a month, and maybe longer, before SBCA would be in any position to actually provide any data to cable operators. Accordingly, and in light of the fact that it has been

well over 15 days from the date of our latest request, we hereby request that SBCA commit to a firm date by which it will provide us with the response to our September 23, 2003 request

We also note that, because the DBS providers have moved this process "in-house" by electing to provide this data only through a trade association that they control and not through an independent third-party, there is no longer any justification for the imposition of any fees or reimbursement charges. Any such fees as a pre-condition for cable operator access to the DBS providers' subscribership data would violate Section 76.907(c), which clearly states that the DBS providers must provide subscribership data within 15 days of a request from a cable operator without condition. Since the DBS providers are not allowed to charge for the provision of this data directly they certainly can't be allowed to impose a charge by funneling the data through their trade association.

Further, we would appreciate any further details as to SBCA's processes for responding to future cable operator requests for subscribership data. In order to ensure that the process available through MBC is replicated without additional burdens, and in light of the fact that the MBC process has been recognized by the FCC as an acceptable means of reporting DBS subscribership, we would expect that SBCA:

- (1) allow a cable operator to make a request via a simple email listing franchise areas and/or zip codes in Excel format;
- (2) allow a cable operator to request and receive data either on 5 digit zip codes or ZIP+4 basis,
- (3) produce reports that are essentially the same in format and scope as the MBC reports in terms of clearly listing DBS provider and direct-to-home satellite carrier subscribership, households, and rough penetration percentages for each identified community unit and zip code,
- (4) include with each report a detailed explanation of the methodology used,
- (5) confirm that such data reflects only current subscribing households (not individual receivers or subscriptions) using actual street addresses of service locations and not P.O. box or billing addresses;
- (6) ensure currency and accuracy of ZIP codes and ZIP+4 extensions;
- (7) remove commercial and test accounts, with multiple dwelling unit accounts considered as residential subscribers regardless of whether billed as individual units or bulk accounts;
- (8) include courtesy customers in subscriber totals;
- (9) utilize current political entity boundary and zip code database information, and
- (10) certify that all of the information contained in each report is correct.

Mr Martin Esteves
Satellite Broadcasting and Communications Association
October 20, 2003
Page 3

Finally, we would expect that, in accordance with the requirements of Section 76.907(c), any such process produce the requested data within 15 days of the submission of a request by a cable operator

Thank you for your attention. If you have any questions, please feel free to contact me at (202) 939-7900

Sincerely,



Craig A. Gilley
Counsel for Time Warner Cable

cc Steven Broeckaert, Esq. (Media Bureau, FCC)

160363

FLEISCHMAN AND WALSH, L. L. P.

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ANDREW QUINN**
JAMES N. MOSKOWITZ
DAVID A. KONUCH

November 10, 2003

* MI AND IL BAR ONLY
** LEGISLATIVE, NON-LAWYER
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Via Certified Mail Return Receipt

David K. Moskowitz, Esq.

Senior Vice President and General Counsel

EchoStar Communications Corp.

5701 S. Santa Fe Drive

Littleton, CO 80120

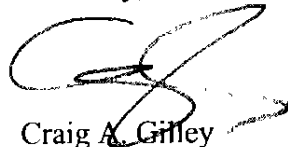
Dear Mr. Moskowitz,

I am writing on behalf of Time Warner Cable to request EchoStar provide subscriber totals for the 90 zipcodes included in Exhibit A attached to this letter. Pursuant to Section 76.907(c) of the Federal Communications Commission rules, EchoStar is required to provide Time Warner Cable with such totals within 15 days of receipt of this request and without charge.

As I am sure you are aware, due to recent developments, DTH subscriber totals necessary to prepare effective competition petitions are no longer "otherwise available" from any other source. On September 23, 2003, we made a request to Media Business Corp. ("MBC"), your former third-party reporting agent, for such information. To date, the requested information has not been supplied by MBC, and MBC has advised us that the DTH providers are no longer providing the requisite subscriber information to MBC. Subsequently on October 20, 2003, we sent the letter attached as Exhibit B to the Satellite Broadcasting and Communications Association ("SBCA"), which press reports and MBC have indicated has now been designated by DirecTV and EchoStar as the entity responsible for aggregating and providing DBS provider subscriber information in response to Section 76.907(c) requests. To date, we also have not received any response to this letter. In telephone calls with SBCA representatives, we have learned that SBCA is not currently capable of providing such data, and that no date has been set by which SBCA will be capable of timely and properly responding to Section 76.907(c) requests.

As the requested information is clearly not otherwise available, and as we have been unable to receive any assurance that such information will be available through SBCA any time within the foreseeable future, it is evident that we are entitled to obtain this data directly from EchoStar. In accordance with Section 76.907(c), we expect EchoStar to respond to this request within 15 days by providing accurate subscriber totals for each of the listed zipcodes. Should you have any questions regarding this matter, please feel free to contact me at (202) 939-7928.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig A. Gilley', with a stylized flourish at the end.

Craig A. Gilley
Counsel for Time Warner Cable

Exhibit A

<u>FRANCHISE</u>	<u>COUNTY</u>	<u>STATE</u>	<u>ZIP</u>	<u>SUBSCRIBERS</u>
El Segundo city	Los Angeles	CA	90245	_____
Gardena city	Los Angeles	CA	90247	_____
Gardena city	Los Angeles	CA	90248	_____
Gardena city	Los Angeles	CA	90249	_____
Hawthorne city	Los Angeles	CA	90250	_____
Hawthorne city	Los Angeles	CA	90260	_____
Hawthorne city	Los Angeles	CA	90303	_____
Hawthorne city	Los Angeles	CA	90304	_____
Lawndale city	Los Angeles	CA	90260	_____
Los Angeles city	Los Angeles	CA	91303	_____
Los Angeles city	Los Angeles	CA	91304	_____
Los Angeles city	Los Angeles	CA	91306	_____
Los Angeles city	Los Angeles	CA	91307	_____
Los Angeles city	Los Angeles	CA	91311	_____
Los Angeles city	Los Angeles	CA	91316	_____
Los Angeles city	Los Angeles	CA	91324	_____
Los Angeles city	Los Angeles	CA	91325	_____
Los Angeles city	Los Angeles	CA	91326	_____
Los Angeles city	Los Angeles	CA	91330	_____
Los Angeles city	Los Angeles	CA	91331	_____
Los Angeles city	Los Angeles	CA	91335	_____
Los Angeles city	Los Angeles	CA	91340	_____
Los Angeles city	Los Angeles	CA	91342	_____
Los Angeles city	Los Angeles	CA	91343	_____
Los Angeles city	Los Angeles	CA	91344	_____
Los Angeles city	Los Angeles	CA	91345	_____
Los Angeles city	Los Angeles	CA	91352	_____
Los Angeles city	Los Angeles	CA	91356	_____
Los Angeles city	Los Angeles	CA	91364	_____
Los Angeles city	Los Angeles	CA	91367	_____
Los Angeles city	Los Angeles	CA	91401	_____
Los Angeles city	Los Angeles	CA	91402	_____
Los Angeles city	Los Angeles	CA	91403	_____
Los Angeles city	Los Angeles	CA	91405	_____

Los Angeles city	Los Angeles	CA	91406	<hr/>
Los Angeles city	Los Angeles	CA	91411	<hr/>
Los Angeles city	Los Angeles	CA	91423	<hr/>
Los Angeles city	Los Angeles	CA	91436	<hr/>
San Fernando city	Los Angeles	CA	91340	<hr/>
San Marino city	Los Angeles	CA	91108	<hr/>
South Pasadena city	Los Angeles	CA	91030	<hr/>
Torrance city	Los Angeles	CA	90277	<hr/>
Torrance city	Los Angeles	CA	90278	<hr/>
Torrance city	Los Angeles	CA	90501	<hr/>
Torrance city	Los Angeles	CA	90503	<hr/>
Torrance city	Los Angeles	CA	90504	<hr/>
Torrance city	Los Angeles	CA	90505	<hr/>
Santa Clarita city	Los Angeles	CA	91321	<hr/>
Santa Clarita city	Los Angeles	CA	91350	<hr/>
Santa Clarita city	Los Angeles	CA	91351	<hr/>
Santa Clarita city	Los Angeles	CA	91354	<hr/>
Santa Clarita city	Los Angeles	CA	91355	<hr/>
Santa Clarita city	Los Angeles	CA	91387	<hr/>
Santa Clarita city	Los Angeles	CA	91390	<hr/>
Los Angeles County	Los Angeles County	CA	91321	<hr/>
Los Angeles County	Los Angeles County	CA	91342	<hr/>
Los Angeles County	Los Angeles County	CA	91350	<hr/>
Los Angeles County	Los Angeles County	CA	91351	<hr/>
Los Angeles County	Los Angeles County	CA	91354	<hr/>
Los Angeles County	Los Angeles County	CA	91355	<hr/>
Los Angeles County	Los Angeles County	CA	91381	<hr/>
Los Angeles County	Los Angeles County	CA	91384	<hr/>
Los Angeles County	Los Angeles County	CA	91387	<hr/>
Los Angeles County	Los Angeles County	CA	91390	<hr/>
Costa Mesa city	Orange	CA	92626	<hr/>
Costa Mesa city	Orange	CA	92627	<hr/>
Cypress city	Orange	CA	90630	<hr/>
Fountain Valley city	Orange	CA	92708	<hr/>
Garden Grove city	Orange	CA	92840	<hr/>

Garden Grove city	Orange	CA	92841	_____
Garden Grove city	Orange	CA	92843	_____
Garden Grove city	Orange	CA	92844	_____
Garden Grove city	Orange	CA	92845	_____
Huntington Beach city	Orange	CA	92646	_____
Huntington Beach city	Orange	CA	92647	_____
Huntington Beach city	Orange	CA	92648	_____
Huntington Beach city	Orange	CA	92649	_____
Los Alamitos city	Orange	CA	90720	_____
Orange city	Orange	CA	92705	_____
Orange city	Orange	CA	92865	_____
Orange city	Orange	CA	92866	_____
Orange city	Orange	CA	92867	_____
Orange city	Orange	CA	92868	_____
Orange city	Orange	CA	92869	_____
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Exhibit B

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October 20, 2003

* MI AND IL BAR ONLY
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Via Certified Mail

Mr. Martin Esteves
Satellite Broadcasting and Communications Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

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Mr. Martin Esteves
Satellite Broadcasting and Communications Association
October 20, 2003
Page 3

Finally, we would expect that, in accordance with the requirements of Section 76.907(c), any such process produce the requested data within 15 days of the submission of a request by a cable operator.

Thank you for your attention. If you have any questions, please feel free to contact me at (202) 939-7900.

Sincerely,

A handwritten signature in black ink, appearing to read "CG", is written over the printed name and title.

Craig A. Gilley
Counsel for Time Warner Cable

cc Steven Broeckaert, Esq. (Media Bureau, FCC)

160363



VIA FEDERAL EXPRESS

Robert M Hall
Senior Vice President, Business Affairs
and General Counsel

November 24, 2003

Craig A. Gilley, Esq.
Flieschman and Walsh, L L P
1919 Pennsylvania Avenue, N W
Suite 600
Washington, D C 20006

Dear Mr. Gilley

I am writing in response to your letter to Larry Hunter, General Counsel of Hughes Electronics, dated November 10, 2003. The Satellite Broadcasting and Communications Association ("SBCA") is in the process of assuming responsibility for providing effective competition tracking data that covers satellite television providers, including DIRECTV. The FCC has been apprised of the transition of this data from Media Business Corp. to the SBCA as a centralized source for such data.

Our understanding is that SBCA imminently (i.e., by the end of November) will have completed its implementation of a new software system to provide the type of data that you have requested and will promptly process Time Warner Cable's request for information. Thus, you should anticipate that Time Warner Cable's request should be satisfied on or about November 28, 2003 via a response from SBCA.

Thank you very much for your patience and understanding during this transition period.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Hall".

Robert M. Hall

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